



**MINUTES
FREMONT PLANNING COMMISSION
REGULAR MEETING OF JULY 8, 2004**

CALL TO ORDER: Chairperson Weaver called the meeting to order at 7:00 p.m.

PRESENT: Chairperson Weaver, Vice Chairperson Wieckowski, Commissioners Harrison, King, Lydon, Natarajan, Sharma

ABSENT: None

STAFF PRESENT: Jeff Schwob, Interim Planning Director
Larissa Seto, Senior Deputy City Attorney II
Norm Hughes, City Engineer
Cliff Nguyen, Planner II
Momoko Ishijima, Planner I
Len Banda, Special Assistant
Alice Malotte, Recording Clerk
Chavez Company, Remote Stenocaptioning
Miriam Schalit, Video Technician

APPROVAL OF MINUTES: Regular Minutes of June 24, 2004, with the following corrections:
Page 15, Senior Deputy City Attorney Seto, third line from top: ". . . on ~~here~~ her . . ."
Page 23, City Engineer Hughes speaking, second line from bottom: ". . . how to ~~disconnect~~ connect discontinuous lines and pockets."
Page 44, Commissioner Sharma, sixth paragraph: "Commissioner Sharma asked if the majority of the community decided to take rights from the minority of the community, could the Commission be expected to side with the ~~minority~~ majority."

Chairperson Weaver stated that her television screen was not working and she asked that other Commissioners advise her of anything that she needed to know. She also announced that the Measure T Zoning Text Amendments would be heard, excluding the Toe of the Hill definition and the Development Reserve Overlay. However, the location of the Toe of the Hill or the General Plan or Zoning maps would not be discussed.

PUBLIC HEARING ITEM

Item 2. **ALAMEDA RESIDENCE – Clara Terrace – (PLN2004-00214)** -- to consider a Planned District minor amendment and a Preliminary Grading Plan for an 8,064 square foot residence, including a detached garage, located in the Mission San Jose Planning Area. A Mitigated Negative Declaration has been previously prepared and adopted for the Planned District subdivision, which includes the anticipated development of this lot.

PROVIDE DIRECTION TO APPLICANT.

Kartik Patel, architect, stated that this project would be located on a 10-acre parcel and had a cascading design up the slope of the hill. The house would have five levels with the entrance at the lowest level. No stacking of levels would occur, which would minimize grading and visual impact from public spaces. At the lower level were the entry and a two-car garage, with an elevator and stairs to the main level (living, dining and family room). Above the main level was the master bedroom and above that was the guest bedroom wing. Between the garage and the main living quarters was another level, which was another guest bedroom/office. Different exterior elements would be used to break up the mass, such as, dark stained wood siding, slate, and stucco. The façade would have undulations to provide depth and character and to minimize the visual impact. The roof slopes would be very shallow and the roof would be made of metal. The house was shifted as far down to the bottom of hill as was allowable. Visual analysis was performed from three public spaces and photos showed that it was difficult to see. Story poles were installed and only the topmost poles could be seen. The Hillside Design Guidelines were followed, i.e., three-foot retaining walls, cut for building pad, deck sizes and elevations. He felt strongly about keeping the overall form and style of the home, along with the glazing and the undulation of the walls at the front of the home. Landscaping would be minor, given the slope of the hill.

Commissioner Natarajan asked if a context slope analysis had been performed regarding the house under construction below this lot. She asked for a photomontage that would include the elevation of the house at the bottom of this lot.

Mr. Patel stated that an analysis had not been performed. He understood that the house below this lot and the house to the side were to be massive, with straight, high walls. The house at the bottom of the slope should shield this house from public view. He agreed to provide a photomontage.

Commissioner Natarajan asked if the previous plan to combine Lots 6 and 7 had been decided against. She asked if the Lot 6 home had been designed. She asked the staff report was correct when it stated that a portion of the site was less than 30 percent slope. If the Commission agreed, would he consider siting the home a little lower on the hill and into the 35-foot setback?

Mr. Patel replied that separate homes would be built on each lot. His firm would design the lot 6 home, but had not come to the City with any design, yet. This lot was the more challenging of the two, so they were concentrating on it first. This home was designed to fit within the original building pad that was created when the lots were subdivided. He understood that the footprint was created on land that had a slope below 30 percent. The current site was the best, as it required less grading and shorter retaining walls for the driveway. Moving the house down the hill would cause the driveway slopes to be steeper; thus, emergency vehicle access and safety could become an issue.

Vice-Chairperson Wieckowski noted that the applicant had stated the footprint was on a less than 30 percent slope, whereas, the staff report stated that the slope was at 32 percent. He asked why the discrepancy. He complimented the architect on the design of the home and the creative way it stepped up the hill. However, neither Measure A nor Measure T allowed building on constrained lands over 30 percent.

Mr. Patel believed the footprint was on a less than 30 percent slope. The current slope that the building pad was on was not a natural slope and it was formed by the grading done at the time of the original subdivision. Before the pads were created for the main and auxiliary buildings, the natural slope was significantly less than 30 percent. The City had previously approved these two pads at less than 30 percent. He had met with staff and the City Attorney before any designing was begun to ensure that these lots could be legally built upon.

Commissioner Harrison asked if the applicant had general comments concerning the suggestions and comments made by staff that they believed would help to bring this project closer to compliance to the spirit of Measure T.

Mr. Patel replied that staff comments made to him were not relevant to Measure T. They concerned the architecture of the house, such as glazing, massing, and undulating entry wall. Nowhere in the Measure T document did it not allow an interesting, modern house. The whole purpose of Measure T was to minimize the view of any hillside development from public thoroughfares. He asked that the architect be allowed to be an architect and to make this project unique, which could be a new standard in the City of Fremont. There were no 30-foot walls with six and twelve pitched roofs that were totally dominating. He believed that, since the glazing would not be seen from any public thoroughfare, it should be allowed, as it was an integral part of the design. He asked if more wall and less glazing would make the house less prominent.

Commissioner Natarajan asked if the size of the house ever came up as an issue when working with staff.

Mr. Patel replied that the size of the house had never come up. The first he heard of it was when he read the staff report.

Chairperson Weaver opened the public hearing.

James Gearhart, resident, stated that this site seemed to be a nonbuildable site and it was constrained above the toe of the hill and was on the hill face. He felt that the safety of the potential occupant and of nearby residents would be compromised if a home was allowed to be built on this site.

Chairperson Weaver closed the public hearing.

Commissioner King liked the design of the home and agreed that architects should be allowed to be architects. He asked if staff believed that this design would violate Measure A or Measure T or was that something that the Commission was to decide. How did the Commission determine the actual slope of the lot or was it subjective.

Interim Planning Director Schwob said that this lot was a legal lot of record and the property owner had the right to develop it. The amount of development was what had to be determined. When this lot was created, the City believed that the slope of the buildable area was under 30 percent. Subsequently, it was discovered that it probably was not under 30 percent. The Commission was being asked to decide if this project would comply with the provisions of Measure T beyond whether something could be built there.

City Engineer Hughes replied that the applicant had submitted a topographic survey of the parcel. After taking measurements, he determined that the lowest portion of the lot, where the driveway and garage would be located, was less than 30 percent, but the majority of the house site was at 33 percent.

Commissioner Natarajan asked if there was no buildable area on this site. Was the site under discussion the same location as was previously identified for the appropriate building envelope? She asked why the previous application for a home on this site was withdrawn.

City Engineer Hughes agreed that there was no buildable area on this site and the envelope was the same as had been previously approved for a past project.

Interim Planning Director Schwob stated that the applicant was the same. They had decided not to build a larger home in favor of the smaller design that was before the Commission. The other lot would have a separate house built on it sometime in the future.

Commissioner Natarajan asked the average size of the custom and non-custom homes were in the development.

Planner Nguyen replied that they were approximately 4,000 square feet. One custom lot was to contain a home that would be approximately 8,000 square feet, which had been approved by the Planning Commission.

Chairperson Weaver asked if that house was being constructed on the lot below this lot in question.

Planner Nguyen stated that she was correct.

Commissioner Natarajan asked how large the lot below this site was on which the home under construction.

Planner Nguyen stated that he believed the lot was under one acre.

Commissioner Sharma asked if the access road was built on any slope that was 30 percent or more.

City Engineer Hughes stated that Clara Terrace was built on the very edge of the steep slope; however, he believed that the original slope was under 30 percent when the road was originally constructed. This lot was a legal and approved lot. The question for the Commission was to decide how to make the home as unobtrusive as possible, according to what Measure T directed.

Commissioner Harrison complimented the architect on the work the Commission had seen before this and, particularly, this home. He asked for a reason why this lot was legal and if the other lot had any standing. Did the City still have the approved maps that showed the sites were on less than a 30 percent slope? Did the City know that this latest survey was absolutely correct, or should the two maps be compared to ascertain which one was most correct?

Senior Deputy City Attorney Seto replied that all lots above the proposed toe of the hill had legal standing, because they were existing legal lots of record. Both lots could accommodate one home on each site. Unless the current owner paid to have a new survey performed for these lots, he would depend upon the current available maps, which were based upon an under 30 percent slope. The original grading plans for the original subdivision showed that pads would be graded to less than 30 percent. However, it seemed that the contractor was not as exact as was hoped when grading for the pads occurred. The current topography map was correct.

Commissioner Harrison asked if he was correct in assuming that the applicant had the right to build one house on that lot and it was this body's responsibility to bring design as close to Measure T as possible.

Senior Deputy City Attorney Seto stated that he was correct. Measure T protected property owners' legal rights and required they conform as much as possible with Measure T.

Commissioner King asked if there were no Measure T, was there anything in place that would have precluded this applicant from building an 8,000 square foot house. Under Measure A (and prior to Measure T) had the Planning Commission approved exceptions similar to the design that was being heard.

Senior Deputy City Attorney Seto stated that Measure A had provisions with regard to constrained lands and areas with significant slopes over 30 percent. Measure A still had constraints.

Interim Planning Director Schwob replied that no lots similar to this one had come before the Planning Commission since he had come to work for the City. Frankly, none of those lots should have been created nor should they exist. Concerning very minor encroachments, the Planning Commission had been quite strict and directed applicants to redesign their homes to avoid those areas. This lot was unique in that only the driveway was below the 30 percent slope.

Commissioner King asked if any house could be developed at all on this property, because of the slope, or was it the size. He wondered if a smaller house would have any less visual impact than one that was larger. Would this house, as presented, have a visual impact that a smaller house might preclude on this same lot? He reiterated that the average size of homes in the area were approximately 4,000 square feet.

Interim Planning Director Schwob answered that it was not just the size, but it would be considered when the overall visual impact was considered. Theoretically, the two-story house being built in front of this proposed house could block it from the public view. By stepping it up the hill, more of the house could be seen.

Planner Nguyen stated that he was correct that the average size of homes in the area were approximately 4,000 square feet.

Interim Planning Director Schwob reminded the Commission that lots were smaller as they moved down the slope. The other custom lot had an 8,000 square foot house on it.

Commissioner Lydon asked if the speaker was correct when he stated that if the City were starting from scratch regarding this development today, no building sites would be allowed. However, the previous property owner had been approved for building on this site, with constraints, given Measure A at that time. Then someone came in and altered the natural slope. Did anyone one know if the current 30 percent slope was the same as the true, natural slope? Would the applicant be allowed to build his home straight up on the portion of the site that was less than 30 percent? With stepping the home up the hillside, the view of the house would be less.

City Engineer Hughes replied that he was correct with his assumptions. However, in conjunction with the grading for the access road and the road to Clara Terrace, the slope on this lot was changed. The grading on the lot was not specifically permitted. If the footprint was on less than a 30-percent slope, it was too small for a home and the house especially considering that the house could not be taller than 30 feet.

Commissioner Sharma complained that no matter what decision the Planning Commission might make on this project (or others that have come up or will come up), it was unknown how the City Council would vote or if the Commission's decision was even legal. He asked that the City Attorney and the City Council decide what was legal, so that the Commission could make a good decision. It seemed that any decision would mean nothing.

Chairperson Weaver stated that the City Council was like an appellate court and no provisional rulings were possible.

Senior Deputy City Attorney Seto replied that the legal department would love to have that legal certainty, also. Sending this project back to staff would not help with the decision. The Commission should be looking at the protection of legal rights, under Measure T. The idea was that the development of residence was allowed, as long as it met as many Measure T provisions as possible. There was no clear, legal rule concerning an exact number of square feet or an exact height, because these decisions remained the discretion of the different City bodies when reviewing the project. Most of these kinds of projects in the future would come to the Planning Commission for the final decision.

Commissioner Sharma asked if she was saying, "Put it on the fast track and let's figure out what's going to survive."

Commissioner King summarized that the courts would have to decide how to balance the rights of people who bought their properties before Measure T was passed with the rights of the citizens who passed Measure T to protect the hills. Someone changed the grade of the slope while grading for the access road. He asked if the City could have stopped the person who did the grading when it was happening.

City Engineer Hughes stated that when the grading occurred, the City was aware that the slope could become steeper. If a "shaving" occurred that made the grade steeper, "there was no practical way to put it back."

Commissioner King asked if there was any way for a buyer of these lots to ascertain if the lots were illegal and could it be assumed that any purchaser would think this lot was legal to build upon.

City Engineer Hughes replied that the potential purchaser could request a complete topographic survey prior to purchase, which would be unusual. A purchaser would assume the lot was legal.

Vice-Chairperson Wieckowski recalled that even minimum encroachments had not been allowed by the Commission previously. The strong and clear thrust of Measure T was that no construction of any kind would be allowed on a 30 percent slope. The challenge to the Commission was what could be done when an encroachment was entirely on the 30 percent slope.

Chairperson Weaver stated that she was not so concerned about the actual building of this house, but the location options that the applicant might have other than the present building pad. Apparently, there were no other options. She believed that the Commission should consider how to minimize the visual impacts and still be consistent with Measure T.

Commissioner Natarajan agreed. This lot should never have been created. There was little difference between 29.5 percent slope and a 30 percent slope. No one could perceive the difference. The applicant had been waiting for five years hoping to gain approval for a home on this site. Assuming the applicant would be allowed to build a house on this lot, it must be agreed that the building site was an approved building envelope. The location of the house was appropriate, in her opinion. When this project came back to the Commission, she asked that a photo montage be done to show the visual impact the house under construction on the lot below this lot would have, a context map that showed the footprints of the adjacent buildings and some kind of a volumetric study to show how it would fit into the hillside. If the house was four levels, rather than five levels, the visual impact would be less. However, if other houses had been allowed to be built were close to the same size, this house would fit in with the others. This house was a great example of how houses should be built in the hills and it probably followed every guideline under Measure A. She agreed with the architect's statement that the designing should be left to creative architects. There were many issues

that the Commission would consider in two weeks at the next meeting. This issue could be used as an example of what to do and what not to do as the process moved forward. She suggested that 890 feet of retaining walls was an issue that the applicant should continue to work with staff on that aspect. The two-car garage door could become two single garage doors. Many of the vertical windows could be broken down to something more horizontal, so that the perceived massing could be further reduced.

Commissioner King agreed that a house could not be built on this lot, if Measure T was totally complied with. The legal and historical background showed that a house should be allowed on this site. He was stunned that the applicant had been trying to get a house built on this lot for five years. He was ready to approve the design. He expected that there would always be exceptions to Measure T that someone would not like. He asked if the Commission was supposed to just give advice at this hearing. He questioned that there was any consensus on the advice.

Chairperson Weaver agreed that comments were to be made to the applicant and that there was to be no vote at this hearing.

Vice-Chairperson Wieckowski expressed concern about the possible glare from the glazing on the southwest side of the house. He agreed that moving the house approximately three feet down the hill, it would help to minimize the visual impact. He liked the architecture but would prefer that the square footage be decreased.

Commissioner Lydon asked that the applicant be a little more patient and he promised the architect an atmosphere of reasonableness, so that a reasonable solution could be reached.

Commissioner Sharma asked if this project was actually five years old. He asked that the date of the project application be included in future documents. He asked if the Commission had the option to approve this project at this hearing.

Interim Planning Director Schwob replied that the applicant applied with this particular design on March 29, 2004. He had a prior approval a few years back and prior to that he had a design that was not approved. Direction was to be given at this hearing. A set of conditions also needed to be drafted before approval.

Chairperson Weaver explained that notice had to be given. Many people might not have attended because the notice stated that comments would be made about the project. If it were to be approved, interested people would be more likely to attend.

Commissioner Sharma asked for information as to whether the access road crossed a 30 percent slope and what that percent was. He asked if the Commission could approve a project on such a slope when the safety of the applicant could be at risk.

Chairperson Weaver agreed with most of the previous comments made by the other Commissioners. She felt the design of the house was very creative and was pleased to see something that was distinctive and different. Regardless of the slope, her concern was the visual impact. She agreed with the glazing mentioned by Vice-Chairperson Wieckowski.

Commissioner Harrison asked if the applicant would have access to the drawings for the home being built on the lower lot or did staff have to do something.

Interim Planning Director Schwob replied that staff would provide the applicant with approved set of the plans.

Chairperson Weaver called for a recess at 8:32 p.m.

Chairperson Weaver called the meeting back order at 8:45 p.m.

CONSENT CALENDAR

THE CONSENT LIST CONSISTED OF ITEM NUMBERS 1, 3, AND 5.

IT WAS MOVED (WIECKOWSKI/HARRISON) AND UNANIMOUSLY CARRIED BY ALL PRESENT THAT THE PLANNING COMMISSION TAKE THE FOLLOWING ACTIONS ON ITEM NUMBERS 1, 3, AND 5.

- Item 1.** **BACCARAT RAILROAD LLC – 41075 Railroad Avenue – (PLN2000-00059)** – to consider an appeal regarding the completeness of an application for a Preliminary Grading Plan and an Initial Study and to consider a Preliminary Grading Plan for a 15-acre site zoned I-L Light Industrial located in the Irvington Planning Area. (Continued from June 10, 2004.)

THE APPEAL HAS BEEN WITHDRAWN. NO ACTION IS REQUIRED.

Chairperson Weaver asked if the Commission needed to vote on this item.

Interim Planning Director Schwob replied that the Commission did not need to vote.

- Item 3.** **UONG PROPERTY – 37678 Fremont Boulevard – (PLN2004-00271)** - to consider a Conditional Use Permit to change legal nonconforming commercial uses of a 1,878-square foot building zoned R-G-19, to similar uses, or uses of lesser intensity for property located in the Centerville Planning Area. This project is categorically exempt per Section 15301(a) (existing facilities with interior or exterior alterations).

Commissioner Harrison asked if alcohol would be allowed to be sold at this location, since it was close to two schools.

Interim Planning Director Schwob replied that the allowed uses would be those allowed in the most comparable commercial district. He asked if the Commission wished to discuss the uses in an open hearing. A liquor store was not one of the allowable uses.

**THERE BEING NO FURTHER COMMENT, THE COMMISSION HELD PUBLIC HEARING;
AND**

FOUND PLN2004-00271 IN CONFORMANCE WITH THE RELEVANT PROVISIONS CONTAINED IN THE CITY'S EXISTING GENERAL PLAN. THESE PROVISIONS INCLUDE GOAL F-6, WHICH STATES THAT EACH OF THE CITY'S ORIGINAL HISTORIC DISTRICTS AND EMERGING COMMUNITY AREAS IS UNIQUE AND IMPORTANT TO FREMONT'S CHARACTER AS A CITY. PRESERVING AND ENHANCING THE UNIQUE IDENTITIES OF EACH OF THE CITY'S AREAS DOES NOT PRECLUDE IDENTIFICATION WITH THE CITY AS A WHOLE. THE PROJECT CONFORMS TO THE GOALS AND THE OBJECTIVES OF SUB-AREA 10 OF THE CENTERVILLE SPECIFIC PLAN;

AND

FOUND PLN2004-00271 AS PER EXHIBIT "B" FULFILLS THE APPLICABLE REQUIREMENTS SET FORTH IN THE FREMONT MUNICIPAL CODE.

- Item 5.** **HILL AREA GENERAL PLAN AND ZONING CHANGES - Citywide - (PLN2004-00030)** - to consider General Plan land use map and zoning ordinance and Hill Area Development Policy changes and rezonings for various parcels in the Hill Area and along the base of the hills to: (1) delete Development Reserve Overlay (D.R.O.) district from the zoning map, (2) rezone parcels from R-1-80 and R-1-160 (Single-Family Residential Districts) to O-S (Open Space District) (3) Revise the definition of the Toe of the Hill (4) rezone all or portions of properties located above and along the base of the Toe of the Hill line from R-1 (Single-Family Residential) and A (Agricultural) Districts to an O-S (Open Space) District or to an R-1 district

for those properties which become located below the Toe of the Hill because of changes in the alignment of the Toe of the Hill line; (5) incorporate relevant provisions of the Development Reserve Overlay and Hill Policy into the Hillside Combining (H-I) district and Open Space (O-S) district regulations and (6) incorporate a map into the General Plan showing extent of land outside the City affected by the implementation of the Hill Initiative of 2002 (Measure T). A Mitigated Negative Declaration has been prepared and circulated for this project.

Interim Planning Director Schwob explained this item dealt with the maps for the General Plan and the zoning. The actual text of the zoning code changes was to be discussed tonight.

CONTINUE TO JULY 22, 2004

The motion carried by the following vote:

AYES:	7 – Harrison, King, Lydon, Natarajan, Sharma, Weaver, Wieckowski
NOES:	0
ABSTAIN:	0
ABSENT:	0
RECUSE:	0

PUBLIC COMMUNICATIONS

ORAL COMMUNICATIONS

PUBLIC HEARING ITEMS (CONTINUED)

- Item 4. **HILL AREA INITIATIVE ZONING TEXT AMENDMENTS (ZTA) - Citywide - (PLN2004-00029)** - to consider a Zoning Text Amendment modifying regulations for the O-S (Open Space) Districts, P-F (Public Facilities), P-D (Planned District) and other zoning regulations (definitions and development standards), and the Development Policy for the Hill Area to implement the General Plan Amendment enacted by the Hill Initiative of 2002 (Measure T). This item will also delete the ~~(R) Development Reserve Overlay District and the Ridgeline Open Space District as they are~~ *it is* being superceded by other zoning regulations to implement Measure T. A Mitigated Negative Declaration has been prepared and circulated for this project. (Continued from June 24, 2004).

MODIFICATIONS TO STAFF REPORT:

Linking Performance Standards: The staff report to the Planning Commission recommends performance standards based on the Hill Initiative of 2002. Other performance standards pertaining to hillside development are also contained in the (H-I) Hillside Combining District (Article 18.2) and the Site Plan and Architectural Approval (Article 27) articles of the Zoning Ordinance. Amendments to the Exhibits in the Planning Commission report are recommended below to make reference to those other standards. Clarifications to the clustering provision of the Performance Standards are also included.

Additional Information on the Hill Area Development Policy: The staff report recommends rescinding the Hill Area Development Policy because its major provisions are to be incorporated into the proposed zoning text amendments. Staff is currently reviewing the Hill Area Development Policy and will propose that some of those standards be included in the Hillside Combining District or other appropriate sections of the Zoning Ordinance. The report to the Planning Commission on July 22nd will make recommendations on incorporating those standards in the appropriate sections of the Zoning Ordinance.

AMENDED EXHIBITS:

The changes to the exhibits in the report are in **bold** and *italics*.

Amend Exhibit A-2 Section 8-2825(a) second sentence to read as follows:

In addition, structures and site plans for those projects located in the Hill Area of the General Plan shall be subject to the performance standards of Article 17.1 Section 8-21717 of this chapter **and the Development Standards of Article 18.2, Section – 21822.1. In cases where there is a conflict in the standards, the standards set forth in this chapter shall prevail.**

Amend Exhibit A-8 Section 8-21715. (a) (2)(a) second sentence as follows:

Lot area may be approved at less than this minimum lot size when parcels are clustered through the conditional use permit process to reduce visibility and environmental harm pursuant to the Performance Standards of this Article. ***Clustering of development may be on a single parcel or on separate, adjacent parcels that do not exceed two acres***

Amend Exhibit A-11 Section 8-21717 (11) and add (19) as follows:

(11) Clustering, which also may be described as transfer of density or development rights, may be allowed for permitted development on any parcels through the conditional use permit process, if the effect is to reduce overall visibility from public places or, consistent with that, to reduce environmental harm. ~~Required or permitted, c~~ ***Clustering may occur by locating all or most of the potentially allowed dwelling units for a given parcel, on a small portion of that parcel (e.g., a 100 acre parcel having a potential for 5 - 20 acre lots for dwellings could be clustered on a small portion of that 100-acre parcel) or the potential development of a given parcel may be transferred to other adjacent existing or new parcels. be on a single parcel or on separate, adjacent parcels that do not exceed two acres.*** Lots created by such clustering shall not exceed two acres.

(19) In addition to the Performance Standards contained in this section, development shall be consistent with the Development Standards contained in Article 18.2, the Hillside Combining District and Article 27, Site Plan and Architectural Approval. In the case of conflict between performance standards, the Performance Standards of this Article shall prevail.

Amend Exhibit A-12(c), Section 8-21815.(g) (iv) as follows

(iv) when located above the Toe of the Hill conforms with the standards and requirements of the Open Space zoning district which corresponds to the parcel's underlying General Plan Open Space designation **and the Development Standards of Article 18.2, Section 21822.1 and Article 27, Section 22706, Standards of Approval. In cases where there is a conflict between standards, the standards set forth in Article 17.1, the Open Space District, shall prevail.**

Interim Planning Director Schwob pointed out the modifications and amended exhibits (above). The City had several layers of regulations for the hill area. Staff was proposing to combine all of the hill development policies within the zoning code. He offered to take any comments or questions from the Commission or the public, refine the document and bring it back with the Item 5 that was to be heard on July 22, 2004.

Chairperson Weaver reminded the public that the Commission would not discuss the Toe of the Hill definition or the Development Reserve Overlay.

Commissioner Natarajan suggested that direction be given to staff about any changes that the Commission wished to see and continue this item until July 22nd.

Chairperson Weaver asked the Commission for a preliminary vote to ascertain if they agreed with Commissioner Natarajan's suggestion.

Commissioner Lydon asked if this item was urgent and needed to be decided on tonight.

Interim Planning Director Schwob replied that staff really wanted comments so that a recommendation could be had at the next meeting.

Commissioner Harrison asked if the public comment would be open or would they have to come back to make comments.

Chairperson Weaver agreed that the public would have to come back on July 22nd to make comments.

Commissioner Natarajan asked if the Mitigated Negative Declaration mentioned within the description should be a Negative Declaration.

Interim Planning Director Schwob agreed that she was correct.

Commissioner Natarajan was most interested in providing performance standards and to make sure that the intent and policies of Measure A were retained and enhanced.

- What visual impact really meant - Improvements to access, landscaping, accessory structures (such as water tanks) all needed to be taken into consideration when looking at visual impact.
- Floor Area Ratio (FAR) - A way to control the size of the house compared to the size of the lot. It should be considered in relation to the buildable portion of the parcel, not the size of the whole parcel.
- 10,000 square feet minimum allowed on any parcel Was that number a part of Measure T?

Interim Planning Director Schwob stated that she was correct. It was mentioned in Measure T's language. Staff believed that regulations could be developed that were more restrictive than Measure T when a less than 20-acre parcel was being considered. Staff planned to offer language that would suggest how to deal with the maximum size of a home, possibly, through Floor Area Ratios.

Commissioner Natarajan suggested that incentives could be offered in return for allowing a larger house, such as sustainable principals, green design, etc. She asked if staff could pull from the preliminary research done toward guidelines and standards for hill area developments a few years ago.

- Yard requirements - Yard requirements and setback requirements were two different things and tied into useable space around the house.
- Submittal requirements - Three-dimensional analyses should be required to allow for a better understanding of the project. Story poles setup should be defined.
- Storm water requirements - These could be required as part of the performance standards, along with erosion control measures.
- Exhibit A(11) - The one percent of the parcel area should be reviewed, as it did not jive with other numbers.
- Ridgelines and hilltops - Better definitions.
- Building heights - Define what a single story element or building was.

Commissioner King appreciated Commissioner Natarajan's comments, as she was better versed in planning than he was. With Measure T in mind, he asked for guidelines regarding the reconciliation of the minimizing the development in the hills with existing property rights.

Commissioner Lydon stated that story poles were a good idea. However, he wondered who authenticated what the poles actually showed. The performance standards for story poles should be developed for use in the hill areas.

Interim Planning Director Schwob stated that guidelines for story poles were in the process of development. Some cities required that a surveyor verify that the poles accurately represented what they were required to represent. On some lots, that added expense could be justified.

Commissioner Harrison believed that the day the Commissioners received their packets, the story poles should be up. Access was not available because of a chain link fence, so those things should be communicated to the Commission.

Interim Planning Director Schwob noted that most cities required that story poles be up two weeks before the report was drafted, but in Fremont it was difficult to keep the poles up in the hills because of the wind.

Commissioner Harrison agreed with the idea of a balance between preserving the hills and property rights. What could be build, what could not be built, what was discretionary and what was not discretionary. An analysis of the lot should be performed to show the available sites for a home.

IT WAS MOVED (NATARAJAN/KING) AND CARRIED BY THE FOLLOWING VOTE (7-0-0—0-0) THAT THE PLANNING COMMISSION **CONTINUE TO JULY 22, 2004**

The motion carried by the following vote:

AYES:	7 – Harrison, King, Lydon, Natarajan, Sharma, Weaver, Wieckowski
NOES:	0
ABSTAIN:	0
ABSENT:	0
RECUSE:	0

MISCELLANEOUS ITEMS

Information from Commission and Staff:

- Information from staff: Staff will report on matters of interest.
- Discussion regarding cancellation of the December 9, 2004 Planning Commission meeting.

Interim Planning Director Schwob asked if any Commissioner received a list of available December dates. Noting that they had not, he stated that he would bring the dates for the December meeting back to the Commission at the next meeting.

Meeting adjourned at 9:20 p.m.

SUBMITTED BY:

APPROVED BY:

Alice Malotte
Recording Clerk

Jeff Schwob, Secretary
Planning Commission